THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO.12447 of 2006

15th September 2006

Between:

1. Smt.Shashikala Mohandas, W/o.Sri T.M.Mahondas, 54 years, Occ.Private Service, R/o.H.No.10-3-282/2/A, Humayun Nagar, Hyderabad.

And one other.

...PETITIONERS

AND

1. State Bank of Hyderabad, Asset Recovery Branch, Precious Plaza, 4-1-358/1, Hanuman Tekdi, Reddy Hostel Road, Abids, Hyderabad, rep.by its Assistant General Manager.

And one other.

...RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

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ORDER:

This Writ Petition is filed seeking a declaration that the action of the respondents in issuing the auction notice dated 20.05.2006 published in local dailies on 27.05.2006 proposing to conduct auction on 27.06.2006 in respect of properties belonging to the petitioners as arbitrary and illegal.

It is not disputed by the petitioners that the property in question was covered by equitable mortgage created in favour of the first respondent bank towards security for the credit facilities sanctioned by it. The respondents filed O.A.No.337 of 2001 in the Debt Recovery Tribunal ('the Tribunal' for brevity) for recovery of the amounts due. Pending the said O.A., the respondents, while invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Act' for brevity), took possession of the properties in question under Section 13 (4) of the Act and issued auction notice dated 09.10.2004. Aggrieved by the same, the petitioners filed an appeal under Section 17 of the Act, which was

taken on file by the Tribunal as S.A.No.138 of 2004. Though, the Tribunal initially granted interim stay of all further proceedings pursuant to the auction notice, subsequently, having noticed that the petitioners failed to pay the requisite Court fees in spite of the time granted the interim stay was vacated on 16.02.2006.

Thereafter, the first respondent-Bank issued a fresh sale notice dated 20.05.2006, which is under challenge in this Writ Petition.

It is pleaded by the petitioners that they have already filed a petition before the Tribunal on 12.06.2006 for restoration of the stay pending the appeal, however, since the Presiding Officer was on leave, they could not pursue the same and in the meanwhile, if the respondents are allowed to proceed with sale, they stand to suffer irretrievable injury. In the circumstances, this Court by order dated 26.06.2006 granted stay of confirmation of auction scheduled on 27.06.2006.

On behalf of the respondent, counter affidavit has been filed stating that subsequently, the application for restoration filed by the petitioners was considered by the Tribunal and the same was dismissed by order dated 09.08.2006 and consequently, the appeal itself stood dismissed. If that be so, it is open to the petitioners to work

out the appropriate remedy as available under law either before the Tribunal or to challenge the order of dismissal before the appellate tribunal. As noted above this Writ Petition was filed only on the ground that the petitioners could not prosecute the appeal pending on the file of the Tribunal for want of Presiding Officer. Now, that the appeal itself is disposed of, in my considered opinion, the Writ Petition has become infructuous and needs no further examining.

Accordingly, the Writ Petition is disposed of granting leave and liberty to the petitioners to work out the appropriate remedy as available under law. However, having regard to the facts and circumstances of the case *status quo* obtaining as on today as to the nature and possession of the property in question shall be maintained for a period of four weeks from today. No costs.

(G.ROHINI, J)

15th September 2006
RRB